

FILED '06 SEP 16 11:31 USDC-ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON FREEZE DRY, INC., an
Oregon corporation,

CV 05-1119-ST

Plaintiff,

ORDER

v.

AMERICOLD LOGISTICS, LLC, a
Delaware limited liability company

Defendant.

MARSH, Judge:

Plaintiff alleges claims for negligence and breach of contract against defendant seeking damages arising out of the storage of frozen bananas in defendant's cold storage facility.

On July 24, 2006, Magistrate Judge Stewart issued a Findings and Recommendation (#58) that defendant's Motion for Partial Summary Judgment (#48) as to the enforceability of a limitation

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of liability provision in defendant's warehouse receipts issued to plaintiff should be **GRANTED**.

Plaintiff has filed timely objections and the matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b) on de novo review. See 28 U.S.C. § 636(b)(1)(C); Bhan v. NME Hospitals, Inc., 929 F.2d 1404, 1415 (9th Cir. 1991).

Magistrate Judge Stewart carefully addressed and analyzed each of the issues raised by plaintiff in its motion and found the limitation of liability provision is conspicuous and is enforceable under the facts of this case as to plaintiff's breach of contract and ordinary negligence claims.¹ Finding no error in the Findings and Recommendation, I adopt them as my own. Accordingly, defendant's Motion for Partial Summary Judgment (#48) is **GRANTED**.

IT IS SO ORDERED.

DATED this 14 day of September, 2006.



Malcolm F. Marsh
Senior United States District Judge

¹ The court notes plaintiff has leave to amend the complaint to allege a claim of gross negligence, which would not be subject to the limitation of liability provision.